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EASTERN DISTRICT OF WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES
LITIGATION

No. CV-04-025-FVS

CLASS ACTION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

JUDGMENT AND ORDER FINALLY
APPROVING PARTIAL
SETTLEMENTS, DISMISSING
CLAIMS AGAINST SETTLING
DEFENDANTS, BARRING CLAIMS
FOR CONTRIBUTION AND
INDEMNITY, ESTABLISHING A
SETTLEMENT FUND, AWARDING

JUDGMENT AND ORDER - 1 of 11
(Case No. CV04-025-FVS)

[1361776 v3.doc]

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COSTS TO SETTLEMENT CLASS
REPRESENTATIVES AND
DIRECTING THE ENTRY OF A
F.R.Civ.P. 54(b) JUDGMENT

THIS MATTER came on for hearing on October 6, 2006 upon the motion of the Settlement Class Representatives for final approval of the participation of the Settlement Class in the following partial settlements: (1) A "Summit Settlement Agreement"; and (2) A "Metropolitan Settlement Agreement" (collectively the "Partial Settlements"). Copies of the Summit and Metropolitan Settlement Agreements are attached to the June 2, 2006 Declaration of Bradley Jones [Docket No. 376].

On August 1, 2006, the Court entered an Order Certifying A Settlement Class, Preliminarily Approving Partial Settlements, Appointing Settlement Class Representatives and Settlement Class Counsel, Approving Form and Manner of Notice, and Scheduling Hearing on Fairness and Final Approval of Partial Settlements Pursuant to Federal Rule of Civil Procedure 23(e) (Docket No. 384). That Order is expressly incorporated herein. Due and adequate notice having been given to the Settlement Class, and the Court having considered the Summit Settlement Agreement and the Metropolitan Settlement Agreement, all papers filed and proceedings had herein, and having reviewed the entire record in this litigation, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
FOLLOWS:

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1 1. The Court, for purposes of this Judgment and Order of Dismissal
 2 (the "Judgment"), adopts all defined terms as set forth in the Summit Settlement
 3 Agreement and Metropolitan Settlement Agreement, with the following
 4 exception. For the purposes of this Judgment, the term "Settling Defendants" is
 5 defined to include Robert K. Potter, Clayton E. Rudd, James V. Hawkins,
 6 Gregory S. Strate, Philip W. Sandifur, Samuel Smith, Bruce J. Blohowiak, B.
 7 Elaine Hoskin, Gary D. Brajcich, the Estate of Harold W. Erfurth, Reuel C.
 8 Swanson, William A. Smith, John T. Trimble and Erik E. Skaggs. The
 9 respective spouses, marital communities and estates of the Settling Defendants
 10 are the "Additional Released Parties."

11
 12 2. The Court has jurisdiction over the subject matter of this action and
 13 over all parties to this action, including all members of the Settlement Class and
 14 the Settling Defendants. The Court has certified, for settlement purposes only, a
 15 Settlement Class as follows:

16
 17 All persons who purchased investment debentures or
 18 preferred stock issued by Metropolitan or investment
 19 certificates or preferred stock issued by Summit
 20 pursuant to registration statements that became or were
 21 effective during the period from February 13, 2001
 22 through December 15, 2003 (the "Class Period")
 23 (excluded from the proposed Settlement Class are
 24 registered representatives who sold Metropolitan or
 25 Summit securities, defendants, and their immediate
 26 family members, any entity in which they have a
 controlling interests, and the heirs, successors or
 assigns of the same).

1 3. The Court finds that the distribution of the Notice of Pendency and
2 Partial Settlement of Class Action, and publication of both the Notice and the
3 Summary Notice of Proposed Partial Class Action Settlements and Settlement
4 Hearing (as provided for in the Court's August 1, 2006 Order), constituted the
5 best notice practicable under the circumstances to apprise all Settlement Class
6 Members of the pendency of this action, the terms of the proposed partial
7 settlements of this action, and their rights with respect to the foregoing, and
8 afforded Settlement Class Members with an opportunity to present their
9 objections, if any, to the Proposed Settlements. The Court finds that the
10 provision of notice to Settlement Class Members fully met the requirements of
11 Rule 23 of the Federal Rules of Civil Procedure, federal law, due process, the
12 United States Constitution, and any other applicable law.
13

14 4. The Court finds that all Settlement Class Members have been
15 adequately provided with an opportunity to remove themselves from the
16 Settlement Class by executing and returning a "request for exclusion" in
17 conformance with the terms of the Summit Settlement Agreement and the
18 Metropolitan Settlement Agreement. The Court further finds that those persons
19 identified in Exhibit 1 hereto have timely and validly requested exclusion from
20 the Settlement.
21

22 5. The Court approves the partial settlement of this action, as set forth
23 in the Summit Settlement Agreement and Metropolitan Settlement Agreement,
24 including the releases contained therein, the relative contributions of the Settling
25
26

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1 Defendants, and all other terms, as fair, just, reasonable, and adequate to the
2 Settlement Class.

3
4 6. The record before the Court demonstrates that the potential
5 damages alleged by the Plaintiffs in this litigation greatly exceed the Settling
6 Defendants' assets available to satisfy a judgment against them. In addition, the
7 insurance policies which are funding the Partial Settlements have already been
8 partially depleted by payment of covered defense costs. Those policy proceeds
9 now available for settlement purposes would certainly be exhausted through
10 reimbursement of additional defense costs in the absence of the Partial
11 Settlements. Finally, the record before the Court amply demonstrates that the
12 Partial Settlements were reached as the result of vigorous, protracted and arm's-
13 length negotiations and that the Partial Settlements have been entered into in
14 good faith.

15
16 7. Except as to any individual claim of those persons (identified in
17 Exhibit 1 attached hereto) who have validly and timely requested exclusion from
18 the Settlement Class, all claims of the Settlement Class Representatives and the
19 members of the Settlement Class referred to in Sections IV(A)(1) and (2) and
20 Section IV (C) of the Summit Settlement Agreement and the Metropolitan
21 Settlement Agreement are dismissed with prejudice as to each of the Settling
22 Defendants and Additional Released Parties.

23
24 8. Pursuant to 15 U.S.C. §78u-4(f)(7)(A), the Metropolitan Settlement
25 Agreement and the Summit Settlement Agreement, any and all claims for
26 contribution arising out of any claims under the federal securities laws released

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1 by the Settlement Class, including, but not limited to any claims that are based
2 upon, arise out of or relate to the Class Action, and/or any claims that were
3 alleged or could have been alleged in the initial Complaint, the Amended
4 Complaint or the Second Amended Complaint, (a) by any person against a
5 Settling Defendant, and (b) by any Settling Defendant, except as set out in 15
6 U.S.C. §78u-4(f)(7)(A)(ii), are hereby permanently barred, extinguished,
7 discharged, satisfied and unenforceable. This contribution bar shall apply
8 whether or not the Settling Defendant is a "covered person" as defined in 15
9 U.S.C. §78u-4(f)(10). Accordingly, without limiting the above, any person
10 (including any defendant in the Class Action who is not a Settling Defendant
11 and all persons purporting to act on his, its or their behalf and all persons
12 purporting to claim by or through him, it or them whether under a subrogation
13 theory or otherwise) is hereby permanently enjoined from commencing,
14 prosecuting or asserting against any of the Settling Defendants any such claim
15 for contribution, and each Settling Defendant is hereby permanently enjoined
16 from commencing, prosecuting, or asserting against any person (including any
17 defendant in the Class Action who is not a Settling Defendant) any such claim
18 for contribution.
19
20

21 9. Any final verdict or judgment to which 15 U.S.C. §78u-4(f)(7)(B)
22 applies that may be obtained by or on behalf of the Settlement Class or a
23 Settlement Class Member against any defendant in the Class Action who is not a
24 Settling Defendant shall be reduced by the greater of (a) an amount that
25 corresponds to the percentage of responsibility of the Settling Defendants for the
26

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1 loss to the Settlement Class or the Settlement Class Member, or (b) the amount
2 paid by or on behalf of the Settling Defendants to the Settlement Class in
3 connection with the Summit Settlement Agreement and the Metropolitan
4 Settlement Agreement except to the extent, if any, that such reduction may be
5 affected by the provisions of 15 U.S.C. §77(k)(f)(1). If any final verdict or
6 judgment under the federal securities laws that is not subject to 15 U.S.C. §78u-
7 4(f)(7)(B) is obtained by or on behalf of the Settlement Class or a Settlement
8 Class Member against any defendant in the Class Action who is not a Settling
9 Defendant, then such final verdict or judgment shall be reduced according to the
10 judgment reduction provisions applicable under Ninth Circuit law as set forth in
11 *Franklin v. Kaypro Corp.*, 884 F.2d 1222 (9th Cir. 1989) and/or, to the extent
12 applicable, the provisions of U.S.C. § 77(k)(f)(1).
13

14 10. The Court finds that the Partial Settlements represent a reasonable
15 and good faith settlement of all claims arising under state law or federal non-
16 securities law released by the Securities Claimants under the Summit Settlement
17 Agreement and the Metropolitan Settlement Agreement and is sufficient to
18 discharge the Settling Defendants and Additional Released Parties from all such
19 claims. The Court further finds that the Settling Defendants and Additional
20 Released Parties are entitled to protection to the fullest extent permitted by
21 applicable state law and federal non-securities law from liability to third parties
22 for contribution or indemnification or any other claim where the claimant's
23 injury is the claimant's liability to the Securities Claimants. These protections
24 include, without limitation, those provided by RCW 4.22.060, Sections 877 and
25
26

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1 877.6 of the California Code of Civil Procedure and any comparable statute or
2 common law of any other state (the "Additional Contribution Protections"). To
3 extent such Additional Contribution Protections apply, any defendant in the
4 Class Action who is not a Settling Defendant shall have any final verdict or
5 judgment obtained by or on behalf of the Settlement Class against such non-
6 settling defendant reduced according to the corresponding judgment reduction
7 provisions applicable under such state law or federal non-securities law,
8 including, but not limited to, those provided by RCW 4.22.060, Sections 877
9 and 877.6 of the California Code of Civil Procedure and any comparable statute
10 or common law of any other state.
11

12 To effect the Settlements, the Court orders that:

13 (a) Any and all defendants in the Class Action who are not
14 Settling Defendants are permanently barred, enjoined and restrained from
15 commencing, prosecuting or asserting any claim against the Settling Defendants,
16 however styled, whether legal or equitable, known or unknown, whether arising
17 under state law or federal non-securities law, whether for indemnification or
18 contribution or otherwise denominated (including claims for breach of contract
19 or misrepresentation), where the claim is based on, arises out of or relates to the
20 Class Action including, without limitation, any claim in which such non-settling
21 defendant seeks to recover from any of the Settling Defendants or the Additional
22 Released Parties (1) any amounts that a non-settling defendant has paid, become
23 liable to pay or may become liable to pay in the Class Action or in any
24 proceeding commenced by a Settlement Class Member or (2) any costs,
25
26

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1 expenses or attorney fees that a non-settling defendant has incurred or may incur
2 in defending against any claim asserted in the Class Action or in any proceeding
3 commenced by a Settlement Class Member (hereafter "Barred Claims"). All
4 Barred Claims are hereby extinguished, discharged, satisfied and made
5 unenforceable.
6

7 (b) Because the non-settling defendants are barred from asserting
8 any Barred Claims against the Settling Defendants and the Additional Released
9 Parties, any final verdict or judgment entered against the non-settling defendants
10 by the Settlement Class or a Settlement Class Member shall be reduced as
11 determined by and provided for under the state law or federal non-securities law
12 applicable to such Barred Claims.

13 (c) If the Settlement Class obtains a settlement, judgment or
14 verdict based upon, arising out of or relating to the Class Action against a
15 person, and, notwithstanding the provisions in Paragraphs 8, 9, 10(a) and 10(b)
16 above, that person obtains a recovery against a Settling Defendant or an
17 Additional Released Party for (1) amounts that person has become liable to pay
18 or may become liable to pay to the Settlement Class and/or (2) any costs,
19 expenses or attorney fees that person has incurred in defending such claims, the
20 Settlement Class shall reduce or credit any judgment or settlement against that
21 person by the amount of that person's recovery against the Settling Defendant or
22 the Additional Released Party, which amount shall then be credited to the
23 recovery against the Settling Defendant or the Additional Released Party.
24
25
26

1 11. The Court approves the creation of a Settlement Fund in the amount
2 of \$1,000,000 to be funded out of the proceeds of the Summit and Metropolitan
3 Settlement Agreements. The Settlement Fund shall be maintained in an interest-
4 bearing account, and shall be used exclusively to reimburse Settlement Class
5 Representatives and Settlement Class Counsel for out-of-pocket expenses
6 incurred by Settlement Class Representatives and Settlement Class Counsel on
7 behalf of the Settlement Class. All distributions out of the Settlement Fund shall
8 be subject to Paragraph 12 of this Order and to further Order of the Court.
9

10 12. Litigation expenses are compensable in a common fund case if the
11 particular costs are reasonable and if they are of the type typically billed by
12 attorneys to paying clients in the market place. *See, e.g., Vincent v. Hughes Air*
13 *West*, 557 F.2d 759, 769 (9th Cir. 1977); *In re Bankamerica Corp. Securities*
14 *Litigation*, 228 F.Supp.2d 1061, 1066-67 (E.D. Mo. 2002); *In re Media Vision*
15 *Technology Sec. Litigation*, 930 F.Supp. 1362, 1366 (N.D. Cal. 1996).
16 Settlement Class Representatives and Seattle Class Counsel seek an award of
17 \$647,398.63 at this time. Having reviewed the expenses for which
18 reimbursement is sought, and mindful of the extensive litigation and work that
19 has been performed to date, the Court finds that these expenses are reasonable,
20 and they are the types of expenses routinely charged to hourly paying clients
21 and, therefore, should be reimbursed out of the Settlement Fund at this time.
22

23 13. The Settlements do not result in final adjudication of the matter as
24 to all defendants. Therefore, the Court reserves making the findings required by
25 15 U.S.C. 78u-4(c)(i)
26

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EXHIBIT 1 EXCLUSIONS

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3. Hundhausen, Mr. and Mrs. William
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4. Ayers, Katheen
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